

Appl. No. 10/734,006  
Amdt. dated December 27, 2007  
Reply to Office Action of July 27, 2007

### **REMARKS**

In the Office Action mailed July 27, 2007, the Examiner indicates that prosecution of this application is being re-opened in view of the Appeal Brief filed September 6, 2006. Claims 1-28 are pending and in the Office Action mailed July 27, 2007, the Examiner rejects claims 1-28. In the present Response, claims 1, 13, 14, 25 and 26 are amended; no new matter is added by virtue of the amendments and the amended claims are fully supported by the Specification as originally filed. In the present Response, claims 6-9 are canceled. Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

#### **1. Paragraph 3 of the Office Action Mailed July 27, 2007: Rejection of Claims 1-3, 6, 8-12, 15 and 23-28 Under 35 U.S.C. §102(b)**

In the Office Action mailed July 27, 2007, the Examiner rejects claims 1-3, 6, 8-12, 15 and 23-28 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,174,602 issued to Matsui et al. (hereinafter "the Matsui patent").

The Examiner believes the Matsui patent discloses a biodegradable fiber excellent in bulkiness, softness, stretchability and feeling, which comprises A a low heat-shrinkable fiber component, and B a high-heat shrinkable fiber component comprising an aliphatic polyester, which is a mixture of aliphatic polyesters with differing melting points (citing the Abstract of the Matsui patent). The Examiner also believes the Matsui patent discloses the B component comprises at least two aliphatic polyesters H and S and the difference in melting point between them is at least 20°C (citing Col. 19, lines 16-19 of the Matsui patent). Additionally, the Examiner believes the Matsui patent discloses that the soft aliphatic polyester S is amorphous (citing Col. 31, lines 12-14 of the Matsui patent). Further, the Examiner believes the Matsui patent discloses that the hard aliphatic polyester H may comprise 90-10 weight percent of the B polymeric composition and the soft aliphatic polyester S may comprise 10-90 weight percent of B (citing Col. 17, lines 1-13 of the Matsui patent). The Examiner believes the Matsui patent discloses that the biodegradable fiber may be used to produce a nonwoven fabric (citing Col. 4, lines 1-10 of the Matsui patent). Additionally, the Examiner believes the Matsui patent discloses that L-lactide is used as the aliphatic polyester (citing Col. 8, lines 5-15 of the Matsui patent). The Examiner believes the Matsui patent discloses that the nonwoven web may be a spunbound nonwoven web (citing Col. 9, lines 35-40 of the Matsui patent). The Examiner also believes the Matsui patent discloses that Figures 1C and 1G illustrate multi-component embodiments wherein a least a portion of an outer surface of the multi-component fibers comprises the polymer blend. Further, the Examiner

Appl. No. 10/734,006  
Amdt. dated December 27, 2007  
Reply to Office Action of July 27, 2007

believes the Matsui patent discloses that the biodegradable fiber may be used in a number of different articles such as undergarments, clothing, etc. and may be used in all of the claimed structures because the biodegradable fiber possesses the claimed structure (citing Col. 11, lines 40-45 of the Matsui patent). The Examiner believes the Matsui patent discloses that the biodegradable fibers may be in either staple fiber or continuous filament form (citing Col. 9, lines 36-50 of the Matsui patent).

In order to anticipate, the cited reference must disclose each and every element of the claimed invention. Independent claims 1, 25 and 26 are each amended herein to include the element of the second polymer including a polyalphaolefin. The Examiner acknowledges that the Matsui patent fails to disclose a biodegradable fiber made from a polymer blend including a polyalphaolefin (see paragraph 6 on page 5 of the Office Action mailed July 27, 2007). Therefore, the Matsui patent fails to disclose an element of amended independent claims 1, 25 and 26 and these claims are patentable over the Matsui patent. Dependent claims 2-3, 6, 8-12, 15, 23-24 and 27-28 are likewise patentable over the Matsui patent at least for depending from amended independent claims 1 and 26. Applicants respectfully request that the rejection in view of the Matsui patent be withdrawn.

**2. Paragraph 4 of the Office Action Mailed July 27, 2007: Rejection of Claims 16-22 Under 35 U.S.C. §103(a)**

In the Office Action mailed July 27, 2007, the Examiner rejects claims 16-22 under 35 U.S.C. §103(a) as being unpatentable over the Matsui patent.

With respect to rejected claims 16-22, the Examiner acknowledges that the Matsui patent does not disclose the claimed structures of dependent claims 16-22. However, the Examiner believes the Matsui patent discloses that the biodegradable fiber may be used in a number of different articles such as undergarments, clothing, etc. and may be used in all of the structures of claims 16-22 because the biodegradable fibers of the Matsui patent possess the claimed structure (citing Col. 11, lines 40-45 of the Matsui patent).

In order to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143. The Examiner bears the initial burden of establishing the *prima facie* case. See In re Plasecki, 223 U.S.P.Q. 785,787, 745 F.2d 1468, 1471 (Fed. Cir. 1984).

Appl. No. 10/734,006  
Amdt. dated December 27, 2007  
Reply to Office Action of July 27, 2007

Claims 16-22 are patentable over the Matsui patent at least for depending from presently amended independent claim 1. As acknowledged by the Examiner, the Matsui patent fails to disclose a biodegradable fiber made from a second polymer that includes a polyalphaolefin. Further, also as acknowledged by the Examiner, the Matsui patent fails to disclose the particular personal care products, medical garments and sterile wrap of claims 16-22. For at least these reasons, the Matsui patent does not teach or suggest all of the limitations of claims 16-22 and Applicants respectfully request that the rejection be withdrawn.

**3. Paragraph 5 of the Office Action Mailed July 27, 2007: Rejection of Claims 4 and 5 Under 35 U.S.C. §103(a)**

In the Office Action mailed July 27, 2007, the Examiner rejects claims 4 and 5 under 35 U.S.C. §103(a) as being unpatentable over the Matsui patent as applied to claim 1 above, and further in view of U.S. Patent No. 6,506,873 issued to Ryan et al. (hereinafter "the Ryan patent").

With respect to dependent claims 4 and 5, the Examiner believes the Matsui patent discloses the use of lactides, which comprise isomers, but the Examiner acknowledges that the Matsui patent fails to teach the type of lactide and the quantity of the lactide. The Examiner believes the Ryan patent discloses a nonwoven fibrous material, which includes a plurality of polylactide containing fibers (citing the Abstract and Col. 1, lines 16-17 of the Ryan patent). The Examiner also believes the Ryan patent discloses that the nonwoven can have utility in medical, hygiene, disposable and durable nonwoven applications where biodegradability can advantageously be combined with a fabric or laminate function. Further, the Examiner believes the Ryan patent discloses that some applications are diapers, training pants, and feminine absorbent articles, among others (citing Col. 3, lines 28-38 of the Ryan patent). The Examiner believes the Ryan patent discloses that the preferred fibers include at least one component, polylactide or polylactic acid (PLA). Additionally, the Examiner believes the Ryan patent teaches multi-component fibers that include at least one component based upon polylactide and at least one additional component, which may be based upon polylactide or upon a material other than polylactide (citing Col. 3, lines 56-67 through Col. 4, lines 1-3 of the Ryan patent). The Examiner believes the Ryan patent discloses that preferred meltstable polylactide compositions preferably include a D-lactide concentration of less than about 5% by weight (citing Col. 16, lines 36-54 of the Ryan patent). The Examiner also believes the Ryan patent discloses that other components in a multi-component fiber can include polyolefins, polyamides, aromatic/aliphatic polyesters, biodegradable aliphatic polyesters and biodegradable aliphatic-aromatic polyesters (citing Col. 10, lines 53-67 of the Ryan patent). Additionally, the Examiner believes the Ryan patent discloses the use of polycaprolactone

Appl. No. 10/734,006  
Amdt. dated December 27, 2007  
Reply to Office Action of July 27, 2007

(PCL), polyhydroxy propionate (or butyrate, caproate or valerate), among others (citing Col. 11, lines 47-57 of the Ryan patent). Further, the Examiner believes the Ryan patent discloses fiber formation processes including melt spinning, melt blowing and spunbonding (citing Col. 12, line 2 & Col. 27, lines 1-2 of the Ryan patent) and carding (citing Col. 26, lines 50-52 of the Ryan patent).

The Examiner believes that since the Matsui patent and the Ryan patent are from the same field of endeavor (i.e. degradable aliphatic polyester fibers), the purpose disclosed by the Ryan patent would have been recognized in the pertinent art of the Matsui patent. The Examiner believes it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of the Matsui patent with the motivation of minimizing the D-lactide level to improve the polymer's ability to crystallize as disclosed by the Ryan patent.

Claims 4 and 5 are patentable over the Matsui patent and the Ryan patent at least for depending from presently amended independent claim 1. As acknowledged by the Examiner, the Matsui patent and the Ryan patent fail to disclose a biodegradable fiber made from a second polymer that includes a polyalphaolefin (see paragraph 6 on page 5 of the Office Action mailed on July 27, 2007). For at least this reason, Applicants respectfully request that the rejection be withdrawn.

#### **4. Paragraph 6 of the Office Action Mailed July 27, 2007: Rejection of Claims 7, 13 and 14 Under 35 U.S.C. §103(a)**

In the Office Action mailed July 27, 2007, the Examiner rejects claims 7, 13 and 14 under 35 U.S.C. §103(a) as being unpatentable over the Matsui patent and the Ryan patent as applied above to claims 4 and 5, and further in view of U.S. Patent Publication No. 2002/0111598 issued to Fletcher et al. (hereinafter "the Fletcher publication").

The Examiner acknowledges that the Matsui patent and the Ryan patent do not disclose the use of a polyalphaolefin. However, the Examiner believes both references teach the use of polycaprolactone. The Examiner believes the Fletcher publication discloses material suitable for a flushable absorbent assembly and discloses the use of amorphous polyalphaolefin or a polycaprolactone (citing paragraph [0078] of the Fletcher publication). Therefore, the Examiner believes that because these two polymers were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the polycaprolactone taught by the Matsui patent for polyalphaolefin.

Claim 7 is canceled herein and claims 13 and 14 have been amended herein. Claims 13 and 14 are patentable over the Matsui patent in view of the Ryan patent and further in view of the Fletcher publication at least for depending from independent claim 1. Nevertheless, the Examiner

Appl. No. 10/734,006  
Amdt. dated December 27, 2007  
Reply to Office Action of July 27, 2007

has failed to establish a *prima facie* case of obviousness. There is no motivation or suggestion in the cited references to modify the teachings of the Matsui patent with the disclosure of the Fletcher publication. The Fletcher publication relates to a pant-like absorbent garment having removable side panels that are releasable and refastenable (see Abstract of the Fletcher publication).

Paragraph [0078] of the Fletcher publication provides that a polyethylene-oxide, or other water-dispersible material, can be coated on one side, with a thin, weak layer of a barrier material, such as an amorphous polyalphaolefin or a poly-caprolactone. Further, the Fletcher publication provides that the barrier material can be applied to the water-dispersible material either as a continuous coating or a closely-spaced discontinuous coating. Both the Matsui patent and the Ryan patent relate to degradable polymer fibers. The Ryan patent relates to multicomponent fibers that may include PLA blends used to improve the adhesion of the PLA component to the non-poly lactide component. Polycaprolactone is included in a list of polymers that are identified for use to blend with PLA components (see Col. 11, lines 34-57 of the Ryan patent). The Examiner has not provided support for why one of skill the art would have read the Ryan patent and been motivated to form degradable multicomponent fibers having polyalphaolefin as a component after reading the Fletcher publication in which the polyalphaolefin is described as a coating material. Further, the Examiner has not provided why one of skill in the art would have exchanged materials used to form a coating with materials used to form multicomponent fibers. For at least these reasons, the Examiner has not made out a *prima facie* case of obviousness and claims 13 and 14 are patentable over the cited references. Applicants respectfully request that the rejection be withdrawn.

In conclusion, and in view of the remarks set forth above, Applicants respectfully submit that the application and the claims are in condition for allowance and respectfully request favorable consideration and the timely allowance of pending claims 1-5 and 10-28. If any additional information is required, the Examiner is invited to contact the undersigned at (920) 721-2433.

Appl. No. 10/734,006  
Amdt. dated December 27, 2007  
Reply to Office Action of July 27, 2007

The Commissioner is hereby authorized to charge any prosecutorial fees (or credit any overpayment) associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such extension is requested and should also be charged to our Deposit Account.

Respectfully submitted,

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#### CERTIFICATE OF TRANSMISSION

I, Mary L. Marchant, hereby certify that on December 27, 2007 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

Mary L. Marchant  
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